

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Hobby Lobby International, Inc.
File No.: EB-09-SE-227

CITATION

ILLEGAL MARKETING OF UNAUTHORIZED FREQUENCY DEVICES

Adopted: November 22, 2010

Released: November 23, 2010

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. This is an official CITATION issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended ("Communications Act"), to Hobby Lobby International, Inc. ("HLI") for marketing unauthorized radio frequency devices in the United States in violation of section 302(b) of the Communications Act, and section 2.803(a)(1) of the Commission's rules ("Rules").

2. HLI should take immediate steps to come into compliance and to avoid any recurrence of this misconduct. As explained below and as provided in the Communications Act, future violations of the Rules in this regard may subject your company to substantial monetary penalties, seizure of equipment, and criminal sanctions.

II. BACKGROUND

3. The Office of Engineering and Technology ("OET") of the Federal Communications Commission referred to the Enforcement Bureau for investigation a complaint alleging that HLI was marketing in the United States an unauthorized radio frequency device, specifically, the JETI Duplex 2.4 GHz System for radio-controlled models ("JETI System"). On March 1, 2010, the Spectrum Enforcement Division ("Division") of the Enforcement Bureau issued a letter of inquiry ("LOI") to HLI. HLI responded to the LOI on April 7, 2010.

1 47 U.S.C. § 503(b)(5).

2 47 U.S.C. § 302a(b).

3 47 C.F.R. § 2.803(a)(1).

4 The JETI Duplex 2.4 GHz System consists of a transmitter and receiver used for remote control of model aircraft, boats, and cars.

5 See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Mark Cleveland, President, Hobby Lobby International, Inc. (March 1, 2010).

6 See Letter from David R. Carley, COO, Hobby Lobby International, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 7, 2010) ("LOI Response").

4. In its LOI Response, HLI stated that the JETI System is manufactured by JETI Model, a Czech Republic company for which HLI has distributed products in the United States for many years.⁷ HLI further stated that it imported the JETI System into the United States in late 2008 and sold the device into early 2009.⁸ Specifically, HLI indicated that it sold 25 units in the United States prior to discontinuing sale of the device immediately following the initial communication from OET in 2009.⁹

5. Additionally, in a Declaration from HLI's Chief Operating Officer, David R. Carley, submitted as an attachment to the LOI Response,¹⁰ Mr. Carley stated that HLI began selling the JETI Duplex transmitter module¹¹ on March 31, 2009 and that it sold 27 of these modules in the United States.¹² Mr. Carley further stated that he "was informed that the manufacturer of the module, JETI Model ... represented to HLI that they were in the process of getting FCC approval at the time [HLI] started to carry the product."¹³ Mr. Carley also indicated that the modules in question were imported by HLI and the only date a shipment was received was February 20, 2009.¹⁴ Mr. Carley stated that the last date on which a module was shipped to a customer was May 8, 2009.¹⁵ According to Mr. Carley, when HLI became aware in May 2009 that these modules did not have approval from the FCC, HLI took them off its website and stopped selling them.¹⁶

III. APPLICABLE LAW AND VIOLATIONS

6. Federal law requires that radio frequency devices be certified in accordance with the FCC's technical standards before they can be marketed in the United States. Section 302(b) of the Communications Act provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations

⁷ *See id.* at 1.

⁸ *See id.*

⁹ OET sent a letter to HLI inquiring about the JETI System in May 2009. *See* Letter from Ray LaForge, Chief, Auditing and Compliance Branch, Office of Engineering and Technology (May 19, 2009). In its response to the Enforcement Bureau's LOI, HLI claims that it sent information about the JETI System to OET in June 2009. HLI stated that the lawyer that it retained to respond to that letter is no longer available to HLI, and HLI does not have access to the response he submitted at that time on HLI's behalf. HLI, nevertheless, included as an attachment to its LOI Response a Declaration from David R. Carley dated May 31, 2009, which it claims was submitted along with its response to the inquiry from OET. *See* LOI Response, Declaration of David R. Carley (dated May 31, 2009). OET, however, has no record of receiving a response from HLI to its May 19, 2009 letter.

¹⁰ *See* LOI Response, Declaration of David R. Carley. *See also* n. 10 *supra*.

¹¹ We note that HLI's LOI Response refers to the JETI System (which consists of a transmitter and receiver), while the Declaration refers just to the JETI transmitter module.

¹² *See* LOI Response, Declaration of David R. Carley.

¹³ *See id.*

¹⁴ *See id.*

¹⁵ *See id.*

¹⁶ *See id.* Mr. Carley also indicated in his Declaration that HLI intended to seek FCC approval for the JETI System. *See id.* However, based on a review of the relevant FCC database and by HLI's own admission, the JETI System has never been authorized. We note that a similarly named device is still featured on HLI's website, though it does not appear that it is presently available for purchase. *See* <http://www.hobby-lobby.com/jeti-duplex.htm> (last visited November 22, 2010).

promulgated pursuant to this section.”¹⁷ Section 2.803(a)(1) of the Commission’s implementing regulations provides that:

no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless ... [i]n the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter.¹⁸

Pursuant to section 15.201(b) of the Rules,¹⁹ intentional radiators,²⁰ such as the JETI System, must be authorized in accordance with the Commission’s certification procedures prior to the initiation of marketing in the United States. Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment or distribution for the purpose of selling or leasing or offering for sale or lease.”²¹

7. HLI admits that it marketed the JETI System in the United States and that this device was not certified. Accordingly, we find that HLI violated section 302(b) of the Communications Act and section 2.803(a)(1) of the Rules by marketing in the United States an unauthorized radio frequency device. We therefore issue this Citation to HLI for violating the Communications Act and the Commission’s rules as discussed above.

IV. FUTURE COMPLIANCE

8. If, after receipt of this Citation, HLI violates the Communications Act or the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures of up to \$16,000 for each such violation or each day of a continuing violation and up to \$112,500 for any single act or failure to act.²² In addition, violations of the Communications Act or the Rules can result in seizure of equipment through *in rem* forfeiture actions, as well as criminal sanctions, including imprisonment.²³

9. HLI may respond to this Citation within thirty (30) days after the release date of this Citation either through (1) a personal interview at the closest FCC office, or (2) a written statement. Any written statements should specify what actions have been taken by HLI to ensure that it does not violate the Rules governing the marketing of radio frequency devices in the future. Please reference file number EB-09-SE-227 when corresponding with the Commission.

10. Under the Privacy Act of 1974, any statement or information provided by you may be used by the Commission to determine if further enforcement action is required.²⁴ Any knowingly or willfully false statement, or concealment of any material fact, made in reply to this Citation is punishable

¹⁷ 47 U.S.C. § 302a(b).

¹⁸ 47 C.F.R. § 2.803(a)(1).

¹⁹ 47 C.F.R. § 15.201(b).

²⁰ Section 15.3(o) of the Rules defines an “intentional radiator” as a “device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3(o).

²¹ 47 C.F.R. § 2.803(e)(4).

²² See 47 U.S.C. §§ 401, 501, 503; 47 C.F.R. § 1.80(b)(3). This amount is subject to further adjustment for inflation (see *id.* § 1.80(b)(5)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

²³ See 47 U.S.C. § 510.

²⁴ See Privacy Act of 1974, 5 U.S.C. § 552a(e)(3).

by fine or imprisonment.²⁵ Please also note that Section 1.17 of the Rules requires that you provide truthful and accurate statements to the Commission.²⁶

V. CONTACT INFORMATION

11. The closest FCC Office is the Atlanta Office, in Duluth, Georgia. You may contact Neal McNeil by telephone, 202-418-1160, to schedule a personal interview, which must take place within thirty (30) days after the release date of this Citation.

12. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five (5) days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

VI. ORDERING CLAUSES

13. **IT IS ORDERED** that a copy of this Citation shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested to Mr. David R. Carley, Chief Operating Officer, Hobby Lobby International, Inc., 5614 Franklin Pike Cir., Brentwood, TN 37027-4324.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁵ See 18 U.S.C. § 1001 *et seq.*

²⁶ 47 C.F.R. § 1.17 (“... no person subject to this rule shall; (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and (2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”)